

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATRICK MCNAMEE,

Petitioner,

v.

CASE NO. 81-CV-74515¹

HONORABLE DENISE PAGE HOOD

BARRY MINTZES,

Respondent.

/

**ORDER DENYING MOTION TO RECALL MANDATE
AND CORRECT THE RECORD
AND TRANSFERRING MOTION TO THE SIXTH CIRCUIT COURT OF
APPEALS AS A SUCCESSIVE HABEAS PETITION**

This matter is now before the Court on Petitioner's "Motion to Recall the Mandate and Correct the Record." (**Doc. No. 4**) On May 19, 2017, the Court issued an Order Denying Without Prejudice the Motion for Relief from Judgment and Transferring Motion to the Sixth Circuit Court of Appeals as a Successive Habeas Petition. Petitioner argues that the Court erred in its findings and conclusions.

"The basic tenet of the mandate rule is that a district court is bound to the scope of the remand issued by the court of appeals." *United States v. Campbell*, 168 F.3d 263, 265 (6th Cir. 1999). Because this Court did not

¹ The case was originally assigned to then-District Judge Patricia J. Boyle.

issue a “mandate,” the Court denies Petitioner’s Motion to Recall Mandate. As to Petitioner’s request to correct the record, the Court denies the motion without prejudice, again transferring this motion to the Sixth Circuit Court of Appeals as a successive petition. As this Court noted in its prior order,

Claims may not be presented in a second or successive petition for habeas corpus relief without permission from the appellate court. 28 U.S.C. § 2244(b)(3); *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005). Failure to obtain precertification for the filing of such petition deprives the district court of jurisdiction to adjudicate the claims raised in such a petition. *Burton v. Stewart*, 549 U.S. 147, 149 (2007). Rule 60(b) motions and any post-judgment motions to amend a petition may not be used as vehicles to circumvent the limitations that Congress has placed upon the presentation of claims in a second or successive application for habeas relief. *Gonzalez*, 545 U.S. at 531-32. A habeas claim under § 2244(b) is a claim where the petition seeks to add a new ground for relief or seeks to present new evidence in support of a claim already litigated. *Id.*

(5/19/17 Order, Pg ID 49-50) Petitioner in the instant motion is seeking to relitigate this Court’s 1982 judgment denying his original habeas petition.

Accordingly,

IT IS ORDERED that Petitioner’s Motion to Recall the Mandate is DENIED and the Motion to Correct the Record is DENIED without prejudice.

(Doc. No. 4)

IT IS FURTHER ORDERED that the Clerk of the Court **TRANSFER** to the Sixth Circuit Court of Appeals the Motion to Recall the Mandate and Correct the Record (**Doc. No. 4**).

s/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: July 12, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 12, 2017, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager